For 168 & 176.

Sup. Brf. of Fenner & Fenner for P. C. in 176.

JAN 27 1899
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SUPREME COURT OF THE UNITED STATES.

No. 168.

Filed Jan. 27, 1899.

MRS. BETTIE ALLEN ET AL.

versus

OGDEN SMITH ET ALS.

No. 176.

OGDEN SMITH ET ALS

versus

MRS. BETTIE ALLEN ET ALS.

SUPPLEMENTAL BRIEF ON BEHALF OF J. L. AUCOIN, ADM'R., PLAINTIFF IN ERROR IN NO. 176, DEFENDANT IN ERROR IN NO. 168.

CHAS. E. FENNER,
SAM. HENDERSON, JR.,
CHAS. PAYNE FENNER,
Atlys. for J. L. Aucoin, Administrator, Plaintiff in Error in No. 176.

SUPREME COURT OF THE UNITED STATES.

No. 168.

MRS. BETTIE ALLEN ET AL.

versus

OGDEN SMITH ET ALS.

No. 176.

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MRS. BETTIE ALLEN ET ALS.

SUPPLEMENTAL BRIEF ON BEHALF OF J. L. AUCOIN, ADM'R., PLAINTIFF IN ERROR IN No. 176, DEFENDANT IN ERROR IN No. 168.

May It Please the Court:

In view of some of the questions propounded from the bench during the argument of this cause, we venture to submit a brief supplemental argument and memorandum of authorities on the nature and scope of the Court's jurisdiction in this case, and the extent to which that jurisdic-

tion is affected by the opinion and judgment of the Supreme Court of Louisiana.

In its original opinion in this case the Supreme Court of Louisiana considered the claim then made on behalf of Mrs. Bettie Allen, that she was entitled to the bounty fund which had been collected by the executors, because it was included in the bequest to her of the net proceeds of the crop manufactured by the executors. The Court denied this claim, holding that the bounty fund was not included in any bequest of the testator to Mrs. Allen or to any one else, that it was an unwilled asset of the estate, and that the legal heirs were, therefore, entitled to it. No Federal question was involved in this decision. The question was simply one of the interpretation of the will.

Mrs. Allen thereupon presented a petition for a rehearing in which she set up that under the terms of the will and the facts as disclosed in the record, she was the "producer" within the meaning and intendment of the act of Congress, and was, therefore, the direct beneficiary of the act, entitled under its terms to the fund.

The rehearing having been granted, the Supreme Court of Louisiana rendered a judgment in Mrs. Allen's favor for one-half of the bounty on the ground that under the terms of the will and the facts of the case, she was the "producer," within the meaning and intendment of the act of Congress, from the time of the testator's decease, and that as such she was entitled to one-half of the bounty as the direct beneficiary of the act.

This judgment was based wholly upon the decision of this Federal question. There was no other matter or issue adjudged sufficiently broad to maintain the judgment. Lest there might be any misunderstanding, the Court was careful to express its adherence to its original opinion that the bounty money was not included in the bequest to Mrs. Allen of the net proceeds of the crop.

Now we respectfully submit that the function of this

Court in this case, and its sole function, is to determine the correctness *vel non* of the decision of the State Court that Mrs. Allen was the "producer," within the meaning and intendment of the act of Congress. and as such the direct beneficiary of the act.

We invoke the rules laid down by this Court in the case of Murdock vs. City of Memphis, 20 Wall. 590:

> "1. That it is essential to the jurisdiction of this Court over the judgment or decree of a State Court that it shall appear that one of the questions mentioned in the statute must have been raised and presented to the State Court; that it must have been decided by the State Court against the right claimed or asserted by the plaintiff in error, under the Constitution, treaties, laws or authority of the United States, or that such a decision was necessary to the judgment or decree rendered in the case.
>
> "2. These things appearing, this Court has jurisdiction, and must examine the judgment so far as to enable it to decide whether this claim of right was correctly adjudicated by the State Court.
>
> "3. If it finds that it was rightly decided, the judgment must be affirmed.
>
> "4. If it was erroneously decided, then the Court must further inquire whether there is any other matter or issue *adjudged by the State Court* (italics ours) sufficiently broad to maintain the judgment, notwithstanding the error in the decision of the Federal question. If this be found to be the case, the judgment must be affirmed without examination into the soundness of the decision of such other matter or issue.
>
> "5. But if it be found that the issue raised by the question of Federal law must control the whole case, or that there has been no decision by the State court of any other matter which is sufficient of itself to maintain the judgment, then this Court will reverse that judgment and will either render such judgment here as the State Court should have rendered, or will remand the case to that Court for further proceedings, as the circumstances of the case may require."

Applying these rules to this case, we submit that this Court will examine the judgment so far, and so far only, as to determine whether the claim under the act of Congress was correctly adjudicated, and there being no other matter or issue adjudged by the State Court sufficiently broad to maintain the judgment, will, if error be found in this respect, reverse the judgment.

In reviewing the decision of this Federal question we further submit that this Court is not bound by the interpretation of the State Court of those clauses of the will the interpretation of which is necessary to a decision of the Federal question. The question being who was the "producer" within the meaning and intendment of the act of Congress, this Court must interpret for itself and independently of the State Court those clauses of the will the interpretation of which is necessarily involved in the decision of these questions.

So, in cases where the question arises as to whether a contract has been made which a State statute impairs, this Court has uniformly held that it would decide such questions for itself, whatever may have been the decision of the State Court.

McGeehey vs. Virginia, 135 U. S. 662; Wright vs. Nagle, 101 U. S. 791.

Jefferson Bank vs. Skelly, 1 Black, 436.

And in a suit brought to this Court from a State court which involved the constitutionality of ordinances made by a municipal corporation in the State, this Court held that it would put its own independent construction on the ordinances.

Yick Wo vs. Hopkins, 118 U. S. 356.

In the case last cited the opinion of the Court was delivered by Mr. Justice Matthews, who said:

> "In the case of the petitioner brought here by writ of error to the Supreme Court of California, our jurisdiction is limited to the question whether the

> plaintiff in error has been denied a right in violation of the Constitution, laws or treaties of the United States. The question whether his imprisonment is illegal under the Constitution and laws of the State, is not open to us. * * * That, however, does not preclude this Court from putting upon the ordinances of the supervisors of the county and city of San Francisco an independent construction; for the determination of the question whether the proceedings under these ordinances and in enforcement of them are in conflict with the Constitution and laws of the United States, necessarily involves the meaning of the ordinances, which, for that purpose, we are required to ascertain and adjudge."

So, in this case, we submit that the jurisdiction of this Court is limited to the question whether the plaintiffs in error have been denied a right in violation of the laws of the United States; that the question whether they have been denied any rights under the will and the laws of the State is not open to the Court, but that this does not preclnde the Court from putting its own independent construction on the will, in so far as this construction is necessarily involved in the determination of the claim under the laws of the United States.

In its opinion on the rehearing the State Court used the following language:

> "But there are other clauses of the will which, in our view, extend her right and show that she was the producer after the death of Mr. Allen. She paid all the expenses of the crop; she was to receive the proceeds under the terms of the will; indeed she was the owner of the crop. She can well be considered, as we think, the producer."

Under the decisions which we have cited we insist that the State Court could not deprive this Court of jurisdiction of the Federal question decided by its interpretation for the purpose of that decision of clauses ot the will the interpretation of which was necessarily involved in the determination of the Federal question.

Mrs. Allen was certainly never the owner of the crop, and as certainly never contributed one cent to the expenses of making it or manufacturing it into sugar. In our previous brief we have fully set out the considerations which, in our view, make it impossible that her claim to have been the direct beneficiary of the act of Congress should be sustained.

The answer to the following question would seem to us decisive of the question whether Mrs. Allen or the estate of R. H. Allen was the "producer" of the sugar and as such the beneficiary of the act of Congress.

Suppose between the time the sugar was manufactured and sold by the executors, in 1894, and the time the ac of Congress was passed, in August, 1895, creditors of the estate had turned up with claims aggregating in amount more than the assets in the hands of the executors, to whom would the bounty fund have gone, to Mrs. Allen or to the creditors?

Under the recent decision of this Court in Briggs vs. Walker, there can be no doubt that the money would have gone to the creditors. This would seem to show conclusively that the estate and not Mrs. Allen was the beneficiary.

The truth is, if it please the Court, that Mrs. Allen's right to any part of this fund, if she has any, is based upon the will, and not upon the act of Congress. She presented this claim to the State Court, which rejected it. This Court is without jurisdiction to review that decision.

Respectfully submitted,

CHAS. E. FENNER,
SAM. HENDERSON, JR.,
CHAS. PAYNE FENNER,

Attys. for J. L. Aucoin, Administrator, Plaintiff in Error in No. 176.